

Pro Se 1 (Rev. 12/16) Complaint for a Civil Case

UNITED STATES DISTRICT COURT

for the

Western District of Michigan



Division

Andrew J White

Case No.

(to be filled in by)

Plaintiff(s)

(Write the full name of each plaintiff who is filing this complaint. If the names of all the plaintiffs cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)

-v-

Fluersh LLC
Brandon Kanitz CEO

Defendant(s)

(Write the full name of each defendant who is being sued. If the names of all the defendants cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)

FILED - GR

December 2, 2022 11:24 AM

CLERK OF COURT

U.S. DISTRICT COURT

WESTERN DISTRICT OF MICHIGAN

BY:JMW SCANNED BY: KB/12/2

1:22-cv-1143

Paul L. Maloney

United States District Judge

Jury Trial: (check one) ☒ Yes ☐ No

COMPLAINT FOR A CIVIL CASE

I. The Parties to This Complaint

A. The Plaintiff(s)

Provide the information below for each plaintiff named in the complaint. Attach additional pages if needed.

Name	Andrew J White
Street Address	553 Harp St SE
City and County	Kentwood Kent
State and Zip Code	Michigan 49548
Telephone Number	616-856-2026
E-mail Address	andrewjacobwhite23@gmail.com

B. The Defendant(s)

Provide the information below for each defendant named in the complaint, whether the defendant is an individual, a government agency, an organization, or a corporation. For an individual defendant, include the person's job or title (if known). Attach additional pages if needed.

Defendant No. 1

Name Fluersh LLC

Job or Title *(if known)* _____

Street Address 1213 Phillips Avenue SW

City and County Grand Rapids Kent

State and Zip Code Michigan 49507

Telephone Number 616-208-9934

E-mail Address *(if known)* _____

Defendant No. 2

Name Brandon Kanitz

Job or Title *(if known)* CEO

Street Address 1213 Phillips Avenue SW

City and County Grand Rapids Kent

State and Zip Code Michigan 49507

Telephone Number 616-208-9934

E-mail Address *(if known)* _____

Defendant No. 3

Name _____

Job or Title *(if known)* _____

Street Address _____

City and County _____

State and Zip Code _____

Telephone Number _____

E-mail Address *(if known)* _____

Defendant No. 4

Name _____

Job or Title *(if known)* _____

Street Address _____

City and County _____

State and Zip Code _____

Telephone Number _____

E-mail Address *(if known)* _____

II. Basis for Jurisdiction

Federal courts are courts of limited jurisdiction (limited power). Generally, only two types of cases can be heard in federal court: cases involving a federal question and cases involving diversity of citizenship of the parties. Under 28 U.S.C. § 1331, a case arising under the United States Constitution or federal laws or treaties is a federal question case. Under 28 U.S.C. § 1332, a case in which a citizen of one State sues a citizen of another State or nation and the amount at stake is more than \$75,000 is a diversity of citizenship case. In a diversity of citizenship case, no defendant may be a citizen of the same State as any plaintiff.

What is the basis for federal court jurisdiction? *(check all that apply)*



Federal question



Diversity of citizenship

Fill out the paragraphs in this section that apply to this case.

A. If the Basis for Jurisdiction Is a Federal Question

List the specific federal statutes, federal treaties, and/or provisions of the United States Constitution that are at issue in this case.

Code of Federal Regulations Title 29 Section 3(m)(2)(B) of the Act; Violation of the 14th amendment "apportionment"

Title VII of the Civil Rights Act of 1964;

Tip Regulations under the Fair Labor Standards Act (FLSA);

MCL 750.213; Defamation Per Se MCL 600.2911

B. If the Basis for Jurisdiction Is Diversity of Citizenship

1. The Plaintiff(s)

a. If the plaintiff is an individual

The plaintiff, *(name)* Andrew J White, is a citizen of the State of *(name)* Michigan.

b. If the plaintiff is a corporation

The plaintiff, *(name)* _____, is incorporated under the laws of the State of *(name)* _____, and has its principal place of business in the State of *(name)* _____.

(If more than one plaintiff is named in the complaint, attach an additional page providing the same information for each additional plaintiff.)

2. The Defendant(s)

a. If the defendant is an individual

The defendant, *(name)* Brandon Kanitz, is a citizen of the State of *(name)* Michigan. Or is a citizen of *(foreign nation)* _____.

b. If the defendant is a corporation

The defendant, (name) Fluersh LLC, is incorporated under the laws of the State of (name) Michigan, and has its principal place of business in the State of (name) Michigan.
Or is incorporated under the laws of (foreign nation) _____, and has its principal place of business in (name) _____.

(If more than one defendant is named in the complaint, attach an additional page providing the same information for each additional defendant.)

3. The Amount in Controversy

The amount in controversy—the amount the plaintiff claims the defendant owes or the amount at stake—is more than \$75,000, not counting interest and costs of court, because *(explain)*:

\$463,600.00

I was passed over for promotions based on my gender. There was extortion.
I was wrongfully terminated based on a lie. My reputation in the industry has been ruined.

III. Statement of Claim

Write a short and plain statement of the claim. Do not make legal arguments. State as briefly as possible the facts showing that each plaintiff is entitled to the damages or other relief sought. State how each defendant was involved and what each defendant did that caused the plaintiff harm or violated the plaintiff's rights, including the dates and places of that involvement or conduct. If more than one claim is asserted, number each claim and write a short and plain statement of each claim in a separate paragraph. Attach additional pages if needed.

Attached

IV. Relief

State briefly and precisely what damages or other relief the plaintiff asks the court to order. Do not make legal arguments. Include any basis for claiming that the wrongs alleged are continuing at the present time. Include the amounts of any actual damages claimed for the acts alleged and the basis for these amounts. Include any punitive or exemplary damages claimed, the amounts, and the reasons you claim you are entitled to actual or punitive money damages.

Punitive damages \$463,600.00

Two years losses: Loss of wages, including tips and overtime. Loss medical insurance, Unable to pay for normal living expenses. Wrongful black note (reputation) on employment record; keeping me from obtaining employment in same industry. Loss of promotion.

Approved, SCAO

Original - Court
1st copy - Defendant2nd copy - Plaintiff
3rd copy - Return

STATE OF MICHIGAN United States JUDICIAL DISTRICT JUDICIAL CIRCUIT COUNTY PROBATE	COMPLAINT Page 1 of 8 pages	CASE NO.
Court address United States Western District of Michigan 399 Federal Bldg 110 Michigan St NW Grand Rapids, MI 49503		Court telephone no. 616-456-2381
Plaintiff's name(s), address(es), and telephone no(s). Andrew J White 553 Harp St SE Kentwood, MI 49548 (616) 856-2026	v	Defendant's name(s), address(es), and telephone no(s). Fluresh LLC Brandon Kanitz CEO 1213 Phillips Avenue SW Grand Rapids, MI 49507 (616) 208-9934
Plaintiff's attorney, bar no., address, and telephone no.		

This complaint is being filed for the sum of \$463,600.00 for the following reasons:

1. Wrongful termination. I was accused of stealing \$20.00 and let go even when I asked what proof other than hearsay management said they confirmed with a customer months after letting us employees know they would never put out an employee's personal information for privacy and protection and terminated me. I believe it was retaliation due to me voicing my concerns with the "policy" that 100% of driver tips had to be turned in and we would still receive our % in our pay check with under 24 hour notice. My refusal to sign the updated employee handbook without an opportunity to review it and discuss the changes. In addition, I applied for a potential promotion based on the companies job requirements, my skills, and college degree holder that I was eligible to apply just two days prior to being terminated.

2. Promotion Discrimination based on sex (gender identity) and nepotism. Civil Rights Act Rights to Equal Employment Opportunity (EEOC): "In employment, all jobs must be open to both men and women unless the employer proves that sex is a bona fide occupational qualification." A complaint with EEOC has been filed and right to sue has been approved. (attached) In addition, the AGM and Lead are brothers creating a toxic work environment. HR would never promote based on skills only on the GM and CFO's desires.

3. Requiring 100% of tips be turned into a tip pool. The Fair Labor Standards Act (FLSA) Federal law allow for tip pools (only a portion) but prohibits employers from keeping any portion of the tips including supervisors. Fluresh allows supervisors classified as leads and management to take part of the tip pool.

4. Extortion, management had threatened to withhold tips if the drivers did not immediately begin to turn all tips in. This was an internal "no notice" policy change.

"In 2020 and 2021, a series of rulemakings were updated to protect tipped workers. These rulemakings addressed 2018 legislative amendments to section 3(m) and other sections of the Fair Labor Standards Act (FLSA) to expressly prohibit employers, including managers and supervisors, from keeping employees' tips."

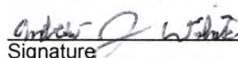
"Code of Federal Regulations Title 29 Section 3(m)(2)(B) of the Act provides that an employer may not keep tips received by its employees for any purposes, regardless of whether the employer takes a tip credit."

462f. (1) A person shall not knowingly subject or attempt to subject another person to forced labor or services by using blackmail, using or threatening to cause financial harm to, or exerting or threatening to exert financial control over another person. This offense is considered a felony punishable by up to 20 years in prison and a fine of up to \$10,000. A criminal complaint will be filed against General Manager Nic Hernandez.

References:

Written statement; Email screen shots with Fluresh Management and HR; Text screens shots from other Fluresh employees; Tip Regulations under the Fair Labor Standards Act (FLSA); Code of Federal Regulations Title 29; Title VII of the Civil Rights Act of 1964; MCL 750.213; MCL 600.2911

12-2-2022
Date


Signature

Plaintiff:
Andrew J White
553 Harp St SE
Kentwood, MI 49548

Defendant:
Fluresh LLC, Brandon Kanitz CEO
1213 Phillips Avenue SW
Grand Rapids, MI 49507

To clarify the reason why I'm filing a claim against my former employer Fluresh Cannabis Provision Center for wrongful termination, Promotion Discrimination based on sex (gender identity), and illegally requiring 100% of tips to be turned in are:

I was referred to the company by their head security officer and had applied for a lead position after a few months of employment at which time I was passed over and the position given to a young lady and had a conversation with management stating I needed a little bit more experience and am being considered on the next round. After said lady was passed up originally two weeks prior to for lack of management. She somehow acquired experience managing in two weeks.

After a few weeks I was approached by management told I was doing an excellent job and given a key to the cannabis cabinets. When the next round came up, I was bypassed for the lead position which was given to a young lady with some experience and no degree as I have an associate and bachelor's degree in business administration/management, including prior management experience and now have a key to the merchandise as well as passwords for full access to the computer system including passcodes for leads to give discounts to customers and employees.

Third round for a lead, again passed over and the position given to yet another young lady. I then heard about two positions with corporate that required a degree. I applied and suddenly was terminated 3 days after for allegedly stealing \$20.00 from tips. Mind you the tip process was changed a month prior that 100% of tip must be turned in and shared amongst all staff which I verbally shared my displeasure and concern. Come to find out after further research it is illegal to require 100% to be turned in and management to receive a portion of.

In addition, the one young woman that had been promoted had been sleeping with the inventory manager resulting in the loss of his job while she was retained, making the workplace hostile. There are several inappropriate sexually natured pictures by the company's Assistant General Manager (same woman who slept with the aforementioned. As a man with college degrees, being trustworthy to be given keys to the cannabis cabinet and passwords I then am suddenly accused of taking \$20.00. While management knows I have a child at home and would stand to lose custody and go to jail. I asked how and was told that, supposedly, "a customer called and asked management if the tip would suffice". A grown man in his 30's or 40's and he's never had a delivery for anything in his life? What kind of question is that? Management stated on camera, they looked at the security footage and could not confirm if \$20 was placed in the tip jar or not but since their count didn't allegedly match what the customer said I was accused of stealing and let go. I was also told there had been a decline in tips over the past month and placed blame on me. However, the company changed their ACH program that does not allow for tips any longer and most customers who order and have the merchandise delivered have no cash and in fact I was told on many occasions they were sorry they couldn't tip. In addition, business has significantly slowed down which also reduces tips. I was considered a hybrid employee which means I would drive 2-3 days week deliver and work in the store the other days.

So, I was let go because I applied for a position in corporate after I emailed the HR manager three weeks prior to explain some concerns. Never once got an email back but he could respond to my email the day I did get fired. He also was CC'd into a different email that the assistant HR manager sent herself and he still didn't respond. It's known that anyone that has ever gone to HR about a complaint regarding Nic Hernandez they were fired almost immediately by Matt Eastman.

I was accused of stealing \$20.00 yet had keys and passwords only leads could have but wasn't a lead. I never stole anything and taking 100% of tips is illegal. I was the go-to person for coworkers and leads on how to due functions of the job. I had to show a different assistant general manager how to issue a refund because non-managers are not allowed. Teaching the job to someone that isn't qualified for the position that I am. Aside from this I was the only approved hybrid (Driver and In-store). I was recommended by their head of security. I have college degrees and experience in management. As soon as I applied to move-up in the company, after being passed over 3 times I randomly get let go and accused of something that they told me to my face that they can't prove. Now I have a blemish on my employment

record, making it harder than ever to land a job during a Pandemic and having an under one year old at home!

Most promoted to lead and to corporate during my employment were female (all but two out of six) and of those two one of which is directly related to the other assistant general manager as they are brothers through blood, meaning nepotism. Also known knowledge of Jessica Newton, displaying sexually explicit material on a site called "onlyfans" and hearsay of inappropriate relations between them and their superior. On top of her being promoted to lead after having been at Fluersh for six weeks, and then straight to AGM less than a month after that. Due to "experience" in another cannabis store, despite others (myself) being their longer and having experience as well as degrees. Since I started at Fluersh back in March to the end of October when I was fired, there have been 28 people that have been fired or quit. Of those 28 over 20 were straight males. The staff now might have maybe six straight males on a staff over 30+. LGBTQIA is very well represented. Essentially if you are a straight male you are being fired because of "competition" making for yet a dangerous work environment.

I believe I have a valid claim of promotion discharge based on my sex (gender), defamation of character, as well as additional information regarding illegal activities within the company that fall under State Action Requirement of laws being violated, Federal Civil Rights Act of 1964 i.e., promoting only those who they can sleep with (the company has a no fraternization policy), requiring 100% of tips be turned in with management getting a cut (tip credit of up to \$5.98 an hour- Managers and owners have no right to tips Department of Labor, Generally it is illegal for a manager to take a worker's tips as they belong to the employee under The Fair Labor Standards Act (FLSA) Federal law allows for tip pools (only a portion) but prohibits employers from keeping any portion of the tips including supervisors i.e., leads or managers) Fluersh allows this, The tip credit is only a portion the employer can keep to pay towards minimum wage which all employees at Fluersh are paid more than minimum wage, selling old product to customers (there are expiration date mandates), promoting a hostile work environment.

I was a fulltime employee with benefits and now am seeking employment unable to use them as a reference since I was discharged by a company that lies, cheats, and steals from their own employees.

Plaintiff:

Andrew J White

Defendant:

Fluersh LLC

Brandon Kanitz CEO

Amount in Controversy:

\$463,600.00

Loss of wages before tips and overtime

\$15.00 an hour @ 40 hours a week x 52 weeks = \$31,200.00 two years \$62,400

Average tips per week \$200-300 cash tips a week plus ACH tips \$200-300 a week Average \$600 week
tips \$13,000 two years \$26,000

Average overtime per week 2-8 hours Avg 4hrs OT a week \$90.00 x 52 weeks= \$4,680 two years
\$9,360.00

TOTAL loss wages for two years **\$97,760.00**

Black note, on employment record for stealing (not true). Unable to use a reference. Unable to work in
same industry. Unable to find comparable employment until 2022.

Personal and Economic impact due to loss:

Reputation/Loss of potential employment opportunities: **\$169,440.00**

Loss of promotion: \$50,000 two years **\$100,000**

Loss of medical insurance average month costs \$400/month for self and minor child \$9,600. No
insurance coverage for self. State help for minor child.

Child Support \$500/month \$12,000 for two years

Car Insurance \$120/month \$2,800

Rent \$1,200/month \$28,800

Utilities \$400/month \$9,600

Student loans \$600/month \$14,400

Groceries \$800/month \$19,200

TOTAL \$96,400.00

Two Year Average Losses:

Wages/Tips	\$ 97,760.00
Loss of promotion	\$100,000.00
Personal and Economic impact	\$ 96,400.00
Reputation/Loss of potential employment opportunities	<u>\$169,440.00</u>
	\$463,600.00

V. Certification and Closing

Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

A. For Parties Without an Attorney

I agree to provide the Clerk's Office with any changes to my address where case-related papers may be served. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Date of signing: Dec. 2, 2022

Signature of Plaintiff

Printed Name of Plaintiff

Andrew J. White
Andrew J. White

B. For Attorneys

Date of signing: _____

Signature of Attorney

Printed Name of Attorney

Bar Number

Name of Law Firm

Street Address

State and Zip Code

Telephone Number

E-mail Address